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21 **UNITED STATES DISTRICT COURT**
22 **DISTRICT OF NEVADA**

23 The FALLON PAIUTE-SHOSHONE
24 TRIBE and the CENTER FOR
25 BIOLOGICAL DIVERSITY,

26 Plaintiffs,

27 v.

28 U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF LAND MANAGEMENT,
KIMBERLY DOW in her official capacity as
District Manager of the Bureau of Land
Management Carson City District Office, and
ORMAT NEVADA INC.,

Defendants.

Case No. 3:21-cv-00512-RCJ-WGC

**FEDERAL DEFENDANTS'
NOTICE OF CONDUCTING
SUPPLEMENTAL WORK
UNDER THE NATIONAL
ENVIRONMENTAL
POLICY ACT**

1 Federal Defendants U.S. Department of the Interior, Bureau of Land
2 Management, and Kimberly Dow,¹ in her official capacity as District Manager of the
3 Bureau of Land Management Carson City District Office give notice of factual
4 developments that may impact this litigation in the future. This case involves a challenge
5 to federal approvals associated with the Dixie Meadows Geothermal Project (“Project”).
6 The U.S. Bureau of Land Management (“BLM”) signed the Dixie Meadows Geothermal
7 Utilization Project Environmental Assessment, Finding of No Significant Impact, and
8 Decision Record in November 2021, authorizing construction and operation of a 60-
9 megawatt (“MW”) geothermal project. ECF No. 14-23; ECF No. 14-25. On December
10 15, 2022, BLM replaced the November 2021 Decision Record with a decision record
11 approving a 12 MW geothermal project. ECF No. 83-1. The December 2022 decision
12 record provides: “No new construction of the geothermal power plant, gen-tie line, or
13 other utilization-related facilities is authorized until [Endangered Species Act (“ESA”)]
14 Section 7 consultation is complete and only if [the U.S. Fish and Wildlife Service
15 (“FWS”)] determines that the construction and operation of the Project or a reasonable
16 and prudent alternative to the 12 MW Plan is not likely to jeopardize the Dixie Valley
17 toad.”
18

19 On February 14, 2023, the Court granted a motion to stay this litigation filed by
20 Federal Defendants to allow BLM to finish the ESA Section 7 consultation referenced in
21 the 12 MW decision record. ECF No. 87. In a declaration filed with Federal Defendants’
22 motion to stay, the field manager for the BLM field office overseeing the Project indicated
23 that BLM anticipated submitting a biological assessment to FWS—the next step in the
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26 ¹ Under Fed. R. Civ. P. 25(d), the successors of public officers who are parties in their official
27 capacity are automatically substituted by operation of law. No order is needed to effect such
28 substitutions. *See* Exhibit 1, Declaration of Kimberly Dow at ¶ 1.

1 ESA Section 7 consultation process—by March 31, 2023. ECF No. 75-3 ¶ 8. FWS noted
2 that after receiving a complete biological assessment, it anticipated using the full 135-day
3 period provided by the ESA and its implementing regulations to issue a biological
4 opinion. ECF No. 75-4 ¶ 2.² The Court ordered the parties to file a joint status report
5 within fourteen days of completion of the ESA consultation to propose a new case
6 schedule. *Id.* at 6.

7
8 While BLM has been diligently working to complete a biological assessment, it
9 has not yet done so. And as a result of its ESA consultation efforts and new information,
10 it has determined that it would be prudent to revisit the environmental review underlying
11 the Project. Exhibit 1 (Declaration of Kimberly Dow) ¶ 4. This new review may result in
12 new determinations under the relevant statutes, including additional analysis under the
13 National Environmental Policy Act (“NEPA”). *Id.* at ¶ 5. BLM intends to work on the
14 ESA Section 7 consultation concurrently with the new review. *Id.* at ¶ 6.

15 BLM is working with Defendant Ormat Nevada Inc. to determine the additional
16 analysis and work needed to carry out the new environmental review. *Id.* at ¶ 7. Once
17 BLM has determined how to proceed administratively, counsel for Federal Defendants
18 intend to discuss potential next steps concerning the litigation with counsel for Plaintiffs
19 and Defendant Ormat, and then approach the Court about how to proceed. In the
20 meantime, the 12 MW decision record and its prohibition on new construction of the
21 geothermal power plant, gen-tie line, or other utilization-related facilities remains in
22 place. *Id.* at ¶ 8. And BLM does not intend to authorize any such new construction until
23 the conclusion of the new environmental review. *Id.*

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26 ² The ESA and its implementing regulations provide that BLM and FWS may agree to extend
27 the consultation, subject to the requirements of 50 C.F.R. § 402.14(e). The ESA and its
28 implementing regulations also allow for an extension of the time FWS may have to deliver
a biological opinion by 10 days if BLM provides comments on the biological opinion. Ex. 4
¶ 3.

1 Counsel for Federal Defendants have informed counsel for Plaintiffs and Ormat
2 regarding the approach outlined above.
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5 Respectfully submitted this 5th day of July 2023.

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7 Assistant Attorney General
8 United States Department of Justice
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CERTIFICATE OF SERVICE

I hereby certify that on July 5, 2023, a copy of the foregoing was filed through the Court's CM/ECF management system and electronically served on counsel of record.

/s/Esosa Aimufua

Esosa R. Aimufua
Trial Attorney